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# Legislative Powers, Court of Appeals Blue Cross & Blue Shield v. McCall

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## LEGISLATIVE POWERS

*N.Y. CONST. art. III, § 9:*

*A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings . . . .*

*N.Y. CONST. art. IV, § 7:*

*Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it.*

*U.S. CONST. art. I, § 7*

*Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.*

### COURT OF APPEALS

Blue Cross & Blue Shield v. McCall<sup>1</sup>  
(decided November 19, 1996)

The plaintiffs, health insurance providers organized under New York State Insurance Law<sup>2</sup>, sought summary judgment declaring

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1. 89 N.Y.2d 160, 674 N.E.2d 1124, 652 N.Y.S.2d 218 (1996).

2. N.Y. INS. LAW § 4301 (McKinney 1985). Section 4301 provides in pertinent part: "A corporation may be organized under the not-for-profit corporation law . . . for the purpose of furnishing medical expense indemnity . . . to persons who become covered under contracts with such corporations."  
*Id.*

that provisions of the State Budget Bills of 1993<sup>3</sup> and 1994<sup>4</sup>, which granted the State Comptroller authority to conduct audits of health insurers, were unconstitutional under Article V, section 1<sup>5</sup> and Article III, section 1<sup>6</sup> of the New York State Constitution.<sup>7</sup> The defendants, the New York State Office of Comptroller, opposed the motion for summary judgment, sought an order upholding the constitutionality of the audit power and sought an order mandating compliance with the subpoenas.<sup>8</sup> The Supreme Court, Albany County, found the legislation constitutional, but struck down the subpoenas as "onerous and overly broad."<sup>9</sup> The Appellate Division, Third Department, reversed the finding of constitutionality, holding that Article V, section 1 prohibited the Legislature from assigning to the Comptroller any administrative functions not related to his delegated powers.<sup>10</sup> The court of appeals affirmed the appellate division's order.<sup>11</sup>

The sole constitutional issue raised in the appeal was whether a legislative grant of authority to the Comptroller to conduct audits

3. 1993 N.Y. Laws § 50. The 1993 Budget Bill provided in pertinent part: "Notwithstanding any law to the contrary, the comptroller may at his discretion conduct any or all management and/or financial audits permitted or required by article 43 of the insurance law." *Id.*

4. 1994 N.Y. Laws § 50. The 1994 Budget Bill extended the audit powers granted to the Comptroller in the 1993 Budget Bill and provided funding for those activities. *Id.*

5. N.Y. CONST. art. V, § 1. Article V, section 1, in describing the duties of the Comptroller, states in pertinent part: "The Legislature shall assign to him no administrative duties, excepting such as may be incidental to the performance of these functions, any other provision of this constitution to the contrary notwithstanding." *Id.*

6. N.Y. CONST. art. III, § 1. Article III, section 1 states: "The legislative power of this state shall be vested in the senate and assembly." *Id.*

7. *Blue Cross & Blue Shield v. McCall*, 166 Misc. 2d 168, 169, 632 N.Y.S.2d 449, 449-50 (Sup. Ct. Albany County 1995) [hereinafter "Blue Cross I"].

8. *Id.* at 169, 632 N.Y.S.2d at 449.

9. *Id.* at 173, 632 N.Y.S.2d at 452.

10. *Blue Cross v. McCall*, 218 A.D.2d 140, 144, 638 N.Y.S.2d 496, (3d Dep't 1996) [hereinafter "Blue Cross II"].

11. *Blue Cross*, 89 N.Y.2d at 171, 674 N.E.2d at 1129, 652 N.Y.S.2d at 223.

of health insurance providers is permissible.<sup>12</sup> The responsibilities of the Comptroller are detailed in Article V, section 1 of the N.Y. State Constitution.<sup>13</sup> Among those functions is the obligation to audit all monetary transactions to which the State is a party.<sup>14</sup> The Legislature is empowered to define the powers and duties of the Comptroller as they relate to these auditing tasks.<sup>15</sup> Article V, section 1 grants the Legislature authority to assign the Comptroller to supervise the accounts of any political subdivision of the State, unless that power is reserved by another section.<sup>16</sup> Additionally, the Legislature is permitted under Article V, section 3 to augment or diminish the powers and functions of state officials, subject to other limitations contained in the New York Constitution.<sup>17</sup>

According to New York Insurance Law section 201, the Superintendent of Insurance is charged with conducting the

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12. *Id.* at 163, 674 N.E.2d at 1125, 652 N.Y.S.2d at 219.

13. N.Y. CONST. art. V, § 1. Article V, section 1 provides in pertinent part:

The comptroller shall be required: (1) to audit all vouchers before payment of and all official accounts; (2) to audit the accrual and collection of all revenues and receipts; and (3) to prescribe such methods of accounting as are necessary for the performance of the foregoing duties. The payment of any money of the state, or of any money under its control, or the refund of any money paid to the state, except upon audit of the comptroller, shall be void . . . . In such respect the legislature shall define his powers and duties and may also assign him: (1) supervision of the accounts of any political subdivision of the state; and (2) powers and duties pertaining to or connected with the assessment of taxation of real estate . . . but not including any of those powers and duties reserved to officers of a county, city, town, or village . . . .

*Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. N.Y. CONST. art. V, § 3. Article V, section 3 provides in pertinent part: "Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, officers, boards, commissions or executive offices of the governor, and increase, modify or diminish their powers and functions." *Id.*

business of the Insurance Department.<sup>18</sup> Under the Insurance Law, the Superintendent is permitted to examine the affairs of any authorized state insurer.<sup>19</sup> In 1992, the Legislature amended the Insurance Law<sup>20</sup> to require that the Superintendent order independent audits of article 43 insurance providers.<sup>21</sup> The following year, the Comptroller was authorized, pursuant to the Budget Bill, to conduct the required audits at his discretion.<sup>22</sup> Funds were allocated to the Comptroller for this purpose in the 1993-94 and 1994-95 State budgets.<sup>23</sup> The expenditure of these funds was, however, conditioned upon the Comptroller and the Superintendent reaching agreement on the use of these funds.<sup>24</sup>

In 1994, the Comptroller and Superintendent of Insurance, to avoid duplication of their efforts, agreed on a plan whereby the Comptroller would coordinate the audits of insurance providers.<sup>25</sup> Under this plan, the Comptroller commenced the audit which led to the instant action.<sup>26</sup> In conducting this audit,

18. N.Y. INS. LAW § 201. Section 201 states in pertinent part: "The superintendent shall possess the rights, powers, and duties, in connection with the business of insurance in this state . . ." *Id.*

19. N.Y. INS. LAW § 309. Section 309 states in pertinent part: "The superintendent may make and examination into the affairs of any insurance corporation or other insurer doing or authorized to do any insurance business in this state . . ." *Id.*

20. N.Y. INS. LAW § 4308(d). Section 4308(d), as amended, states in pertinent part:

The superintendent shall order an independent management and financial audit of corporations subject to the provisions of this article . . . to determine the viability of such corporation's products . . . . The scope of the audit shall include, but not be limited to, financial and competitive position, corporate structure, and governance, organization, management, strategic direction, rate adequacy, and the regulatory and competitive environment in the State of New York.

*Id.*

21. *Blue Cross*, 89 N.Y.2d at 163, 674 N.E.2d at 1125, 652 N.Y.S.2d at 219.

22. *Blue Cross II*, 218 A.D.2d at 141, 638 N.Y.S.2d. at 496.

23. *Blue Cross I*, 166 Misc. 2d at 170, 632 N.Y.S.2d at 449.

24. *Id.* at 170, 632 N.Y.S.2d at 449.

25. *Blue Cross*, 89 N.Y.2d at 164, 674 N.E.2d at 1125, 652 N.Y.S.2d at 219.

26. *Id.*

the Comptroller issued subpoenas seeking millions of plaintiffs' computerized claim files.<sup>27</sup> Professing that compliance would be particularly burdensome, plaintiffs requested modification or withdrawal of the subpoenas.<sup>28</sup> This request was refused, and resulted in the plaintiffs challenging the constitutionality of the legislative authorization.<sup>29</sup>

Initially, it has been observed that "it is competent for the legislature . . . to regulate insurance companies and the management of their affairs . . . ." <sup>30</sup> Further, as the court of appeals noted, the privilege granted to insurance companies to conduct business in the state is subject to conditions designed by the legislature to promote the general welfare.<sup>31</sup> In addition, the Superintendent of Insurance, as head of the department given regulatory authority in the insurance industry, has the power to implement legislative policy with respect to the Insurance Law.<sup>32</sup> Moreover, the Legislature has mandated that certain insurance companies be subjected to independent audits to ascertain their continued economic vitality.<sup>33</sup> Therefore, "the article 43 audits are a proper exercise of the administrative powers of the Insurance Department . . . ." <sup>34</sup>

Article V, section 1, however, limits the Legislature's power in delegating administrative tasks to the Comptroller.<sup>35</sup> Additionally, Article V, section 3, which enables the Legislature

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27. *Blue Cross I*, 166 Misc. 2d at 174, 632 N.Y.S.2d at 452.

28. *Blue Cross*, 89 N.Y.2d at 164, 674 N.E.2d at 1125, 652 N.Y.S.2d at 219.

29. *Blue Cross II*, 218 A.D.2d at 141, 638 N.Y.S.2d at 496.

30. *People v. Formosa*, 131 N.Y. 478, 483 (1892).

31. *Blue Cross*, 89 N.Y.2d at 164, 674 N.E.2d at 1126, 652 N.Y.S.2d at 220 (citing *Health Ins. Ass'n v. Harnett*, 44 N.Y. 2d 302, 309, 376 N.E.2d 1280, 1284, 405 N.Y.S.2d 634, 638 (1978)).

32. *Blue Cross*, 89 N.Y.2d. at 165-66, 674 N.E.2d at 1126, 652 N.Y.S.2d at 220.

33. *Id.* at 166, 674 N.E.2d at 1126, 652 N.Y.S.2d at 220. *See* N.Y. INS. LAW § 4308 (d).

34. *Blue Cross*, 89 N.Y.2d. at 166, 674 N.E.2d at 1127, 652 N.Y.S.2d at 221.

35. *Id.* at 167, 674 N.E.2d at 1127, 652 N.Y.S.2d at 221. *See* N.Y. CONST. art. V, § 1.

to assign additional tasks to the Comptroller, is subject to the constitutional limitations of Article V, section 1.<sup>36</sup> Thus, the Legislature is prohibited from assigning the Comptroller any administrative duties "that are not incidental to the supervision of the fiscal affairs of the State . . . ." <sup>37</sup> As the article 43 audits had been found to be an administrative function, they may not "under the plain language of Article V, § 1 . . . be delegated to the Comptroller."<sup>38</sup>

Defendants, as might be expected, urged a narrower construction of Article V, section 1.<sup>39</sup> By their view, auditing is a primary function of the Comptroller's office, distinguishable from other duties which may be termed "administrative."<sup>40</sup> As a non-administrative function, they argued, the article 43 audits did not constitute legislative action which "impermissibly interferes with the exercise of the Comptroller's discretion."<sup>41</sup> The court rejected this interpretation of Article V, section 1, citing the legislative history of the 1925 amendment which added the challenged provision to the State Constitution.<sup>42</sup> Governmental restructuring was undertaken to "downsize" the number of agencies in an attempt to create clearer lines of authority and responsibility, the court noted.<sup>43</sup> Even this purpose did not propel the Legislature to assign all auditing functions to the Comptroller.<sup>44</sup>

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36. *Blue Cross*, 89 N.Y.2d at 168, 674 N.E.2d at 1127-28, 652 N.Y.S.2d at 221-22.

37. *Id.* at 167, 674 N.E.2d at 1127, 652 N.Y.S.2d at 221.

38. *Id.*

39. *Id.*

40. *Id.* at 168, 674 N.E.2d at 1127, 652 N.Y.S.2d at 221.

41. *Research Group v. Thruway*, 77 N.Y.2d 86, 91, 565 N.E.2d 1259, 1261, 654 N.Y.S.2d 708, 710 (1990) (holding unconstitutional a statute which required the Comptroller to analyze and report on proposed toll increases by the New York State Thruway Authority).

42. *Id.* at 168, 674 N.E.2d at 1127, 652 N.Y.S.2d at 221.

(citing Report of Reconstruction Commission to Governor Alfred E. Smith on Retrenchment and Reorganization in the State Government, part I, page 3 (October 10, 1919)).

43. *Blue Cross*, 89 N.Y.2d at 168, 674 N.E.2d at 1128, 652 N.Y.S.2d at 222.

44. *Id.*

Interestingly, when the Insurance Department was established in 1859, its predecessor in regulating the insurance industry was the Comptroller.<sup>45</sup> At the time of this restructuring, however, the Insurance Department had long been responsible for conducting audits of businesses involved in the insurance industry.<sup>46</sup> The restructuring left unaffected the Insurance Department's authority in the field of insurance regulation.<sup>47</sup> "Thus, financial oversight of private, non-public insurers remained under the auspices of the Insurance Department."<sup>48</sup> Correspondingly, defendants attempt to persuade the court of the validity of a narrow reading of Article V, section 1 was ultimately unsuccessful.<sup>49</sup>

Presented with its finding that the plain language of Article V, section 1 prevented the Legislature from assigning the auditing task to the Comptroller, coupled with a lack of evidence concerning a contrary intent, the court turned to consider defendants' non-Constitutional claims.<sup>50</sup> First, on a practical basis, defendants argued that the Comptroller is uniquely qualified to conduct audits.<sup>51</sup> In response, the court noted that although the Comptroller has substantial audit experience, as claimed, defendants have performed this function themselves for more than a century.<sup>52</sup> Second, defendants urged that because the State is permitted to audit plaintiffs through the Insurance Law, allowing the State auditor to perform that function is a reasonable exercise of the legislative will.<sup>53</sup> However, the court responded that deference to a legislative decision is impermissible when that action is expressly prohibited by a Constitutional

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45. *Id.* at 169, 674 N.E.2d at 1128, 652 N.Y.S.2d at 222 (citations omitted).

46. *Id.* at 168-69, 674 N.E.2d at 1128, 652 N.Y.S.2d at 222.

47. *Id.* at 169-70, 674 N.E.2d at 1128, 652 N.Y.S.2d at 222.

48. *Id.* at 170, 674 N.E.2d at 1129, 652 N.Y.S.2d at 223.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*



provision.<sup>54</sup> Having disposed of all defendants claims, constitutional and otherwise, the court held that "the Legislature may not delegate administrative duties of the Insurance Department relating to article 43 audits of private insurers when such duties are clearly administrative and not incidental to the primary function of the Comptroller."<sup>55</sup>

The Legislative power to assign additional duties and functions to state officials under Article V, section 3, is merely permissive, subject to other contrary provisions of the Constitution.<sup>56</sup> In contrast, the express preclusion of additional administrative assignments by the Legislature to the Comptroller contained in Article V, section 1 is mandatory.<sup>57</sup> Therefore, the New York State Court of Appeals held that those provisions of the 1993 and 1994 State Budget Bills which granted the Comptroller power to conduct audits of health insurance providers violated the clear prescriptions contained in Article V, section 1.<sup>58</sup>

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54. *Id.* at 170-71, 674 N.E.2d at 1129, 652 N.Y.S.2d at 223. *See* Research Group v. Thruway, 77 N.Y.2d 86, 91, 565 N.E.2d 1259, 1261, 564 N.Y.S.2d 708,710 (1990); Patterson v. Carey, 41 N.Y.2d. 714, 363 N.E.2d 1146, 395 N.Y.S.2d 411 (1977) (holding that the independent auditing powers of the Comptroller were unconstitutionally infringed upon by a statute which required the Comptroller to review and report on any toll increases proposed by the Jones Beach State Parkway Authority).

55. *Id.* at 171, 674 N.E.2d at 1129, 652 N.Y.S.2d at 223.

56. *Id.* at 168, 674 N.E.2d at 1128, 652 N.Y.S.2d at 222.

57. *Id.*

58. *Id.* at 171, 674 N.E.2d at 1129, 652 N.Y.S.2d at 223.